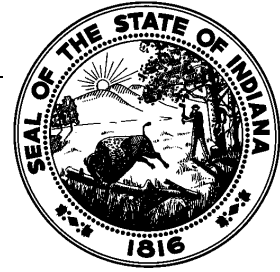


Indiana Department of Education



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To Whom This Matter May Concern

RE: Attendance In Public Schools and Immigration Status

Some schools have used the immigration status of a person of compulsory school attendance age as grounds for denial of attendance in K-12 public schools in violation of the state compulsory school attendance law. This is apparently done without procedural or substantive due process of law and using the alleged provisions of the Student and Exchange Visitor Information System (SEVIS) or the United States Department of Homeland Security as authority for the exclusion. The question is whether the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, 8 USC 1372, as amended, and other federal statutes such as the USA Patriot Act (Public Law 107-56) may limit enrollment in public, Kindergarten through 12th grade, schools in the state of Indiana. This memorandum will describe the policy of the Indiana Department of Education in this matter.

The primary purpose of SEVIS is to maintain complete and up-to-date information on all foreign students. 67 FR 76265, Section XV, amending 8 CFR Parts 103, 214, 248 and 274a. SEVIS will also be used as a tool for ensuring that F, J and M nonimmigrant students are complying with applicable regulatory requirements. 67 FR 76269. Compliance with SEVIS reporting does not exempt F, M or J nonimmigrants from requirements or restrictions associated with other applicable statutes and regulations. 67 FR 76256. (Note: We do not believe we will see an "M" visa in K-12 public schools.) In accordance with 8 USC 1372 (d) (IIRIRA) the effect of failure to provide information required under this federal law by an approved educational institution shall result in the denial of issuance or the revocation of approved visas. These rules apply to approved institutions of higher education, designated exchange visitor programs and approved educational institutions such as air flight schools, language training schools or vocational schools. 8 USC 1372 (h) .

The Indiana compulsory school attendance law is applicable to any student age 7 to age 18 who resides in Indiana, without regard to legal domicile. See I.C. 20-8.1-3-2. Administrators of any educational, benevolent, correctional or training institution are responsible for ensuring that any person within their jurisdiction, and of compulsory school attendance age, be enrolled in school. I.C. 20-8.1-3-36. Each day of violation is a separate offense. Violation of the compulsory school attendance law is a Class B misdemeanor offense. I.C. 20-8.1-3-37. Indiana Code 20-8.1-6.1-10 gives the Indiana State Board of Education jurisdiction to hear any dispute on the right to attend school in any school corporation in Indiana.

Policy: It is the policy of the department that any school-aged child in Indiana for at least 30 days (Indiana State Board of Education Rule 511 IAC 1-7-1) must be enrolled in public or private school. Any child of compulsory school attendance age presented for enrollment should be enrolled without delay. No child should be denied enrollment in public schools (K-12) in Indiana due to immigration status. Any reports of the student's immigration status to any federal government office is the responsibility of the local school corporation in accordance with federal law. Any question or dispute concerning the right to attend school or tuition should be brought to the Indiana State Board of Education. The child in question should be enrolled and enrollment should continue during the appeal process. The State Attendance Officer has jurisdiction and authority to enforce the law in court, if necessary. I.C. 20-8.1-3-16. In review of the federal law I find nothing preventing the enforcement of this state law.

Gaylon J. Nettles
State Attendance Officer